

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASTLE AIR CONDITIONING CORP.,

Defendant.

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x

Case No. 1:19-cv-5253

COMPLAINT

The United States of America, at the direction of a delegate of the Attorney General and with the authorization of a delegate of the Secretary of the Treasury, pursuant to 26 U.S.C. § 7401, brings this civil action to reduce to judgment unpaid federal tax liabilities owed by Castle Air Conditioning, Corp. For its complaint, the United States alleges as follows:

1. The district court has jurisdiction pursuant to 26 U.S.C. §§ 7402(a) and 28 U.S.C. §§ 1331, 1340, and 1345.

2. The defendant Castle Air Conditioning Corp. is located in Queens County, New York, within the jurisdiction of this Court.

3. A delegate of the Secretary of the Treasury made assessments against Castle Air Conditioning, Corp., for employment taxes (Form 941) for the periods, on the dates, and in the amounts described below. These liabilities have balances due as of September 2, 2019, including assessed and accrued late-filing and late-payment penalties under 26 U.S.C. § 6651 or penalties for failure to make estimate tax payments under 26 U.S.C. § 6654, costs, and statutory interest, and after applying any abatements, payments, and credits, as follows:

Tax Period Ending	Assessment Date	Amount Assessed	Balance Due 09/02/2019
12/31/2006	11/19/2007	\$28,101.98	\$31,023.63
09/30/2007	12/24/2007	\$21,583.96	\$18,447.83
12/31/2007	05/19/2008	\$28,121.63	\$64,861.57
03/31/2008	06/30/2008	\$22,680.30	\$20,172.81
06/30/2008	09/29/2008	\$21,032.61	\$24,188.46
09/30/2008	03/02/2009	\$21,576.07	\$23,877.90
12/31/2008	04/06/2009	\$24,132.40	\$27,716.40
03/31/2009	06/29/2009	\$19,096.70	\$38,964.15
06/30/2009	09/07/2009	\$20,849.18	\$41,977.87
09/30/2009	01/04/2010	\$24,695.72	\$48,990.00
12/31/2009	04/05/2010	\$25,566.23	\$50,187.79
03/31/2010	06/14/2010	\$19,906.93	\$38,700.43
06/30/2010	09/20/2010	\$18,910.53	\$36,339.39
09/30/2010	02/14/2011	\$38,719.22	\$74,470.86
12/31/2010	04/04/2011	\$35,907.55	\$78,042.69
03/31/2011	07/04/2011	\$17,793.18	\$34,003.83
06/30/2011	09/19/2011	\$14,764.81	\$1,674.63
03/31/2012	07/02/2012	\$11,058.83	\$627.71

06/30/2012	10/01/2012	\$18,612.95	\$22,561.74
09/30/2012	01/07/2013	\$20,369.05	\$35,051.96
12/31/2012	03/25/2013	\$21,951.33	\$33,864.72
03/31/2013	06/24/2013	\$20,862.39	\$22,911.84
06/30/2013	09/30/2013	\$18,211.27	\$27,571.26
09/30/2013	01/06/2014	\$21,787.52	\$31,686.34
12/31/2013	04/07/2014	\$18,342.12	\$25,043.71
03/31/2014	06/30/2014	\$19,451.60	\$32,683.23
09/30/2014	12/22/2014	\$21,527.09	\$23,290.13
12/31/2014	04/06/2015	\$20,420.93	\$23,045.04
03/31/2015	06/29/2015	\$17,370.18	\$1,736.78
06/30/2015	09/28/2015	\$29,453.86	\$18,853.10
09/30/2015	02/08/2016	\$24,055.45	\$18,988.23
12/31/2015	04/04/2016	\$21,439.48	\$29,583.77
03/31/2016	07/04/2016	\$14,365.67	\$17,329.31
06/30/2016	10/03/2016	\$7,962.90	\$595.57
09/30/2016	01/09/2017	\$15,823.01	\$1,538.85
03/31/2017	07/03/2017	\$6,180.33	\$173.46
06/30/2017	10/02/2017	\$11,484.94	\$1,264.09
09/30/2017	02/12/2018	\$11,093.34	\$9,620.88

12/31/2017	03/26/2018	\$19,855.08	\$8,557.76
03/31/2018	07/09/2018	\$16,799.58	\$1,441.67
06/30/2018	12/10/2018	\$14,217.81	\$18,971.55
09/30/2018	12/31/2018	\$16,150.55	\$20,823.00
12/31/2018	04/08/2019	\$20,713.61	\$25,840.56
03/31/2019	06/17/2019	\$17,268.86	\$20,897.59
Total			\$1,105,605.35

4. Notice of the liabilities described in paragraph 3 was given to, and payment demanded from, Castle Air Conditioning Corp.

5. Despite proper notice and demand, Castle Air Conditioning Corp. failed, neglected, or refused to fully pay the liabilities, and after the application of all abatements, payments, and credits, it remains liable to the United States in the amount of \$1,105,605.35, plus statutory additions and interest accruing from and after September 2, 2019.

6. An installment agreement associated was pending for 60 days from February 8, 2008, until April 8, 2008, thereby tolling the statute of limitations under 26 U.S.C § 6331(k)(2) for quarterly tax periods ending December 31, 2006, and September 30, 2009. Further, the installment agreement was terminated on November 24, 2008, which tolled the statute of limitations for an additional 30 days under 26 U.S.C. § 6331(k)(2)(A), (B), for quarterly tax periods ending December 31, 2006, September 30, 2007, December 31, 2007, and March 31, 2008.

7. A second installment agreement was entered on December 27, 2011, and was terminated on April 11, 2013, which tolled the statute of limitations for an additional 30 days

under 26 U.S.C. § 6331(k)(2)(A), (B), for quarterly tax periods ending December 31, 2006, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008, December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009.

8. A third installment agreement was pending for 226 days from September 23, 2014, until May 7, 2015, thereby tolling the statute of limitations under 26 U.S.C § 6331(k)(2) for quarterly tax periods ending December 31, 2006, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008, December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009. Further, the installment agreement was terminated on April 28, 2016, which tolled the statute of limitations for an additional 30 days under 26 U.S.C. § 6331(k)(2)(A), (B) for these quarterly tax periods.

9. On June 12, 2017, Castle Air Conditioning Corp. submitted an offer in compromise pursuant to 26 U.S.C. § 7122. The offer in compromise was rejected on March 28, 2018.

10. Although a proceeding in court must generally be commenced within ten years after the assessment of a tax, this action has been timely commenced under 26 U.S.C. § 6502 because the statute of limitations was tolled pursuant to 26 U.S.C. § 6331(i) and (k) for quarterly tax periods ending December 31, 2006, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008, December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009.

WHEREFORE, the plaintiff United States of America requests the following relief:

A. Judgment against the defendant Castle Air Conditioning Corp. for unpaid federal employment tax liabilities (Form 941) for the quarterly periods ending December 31, 2006, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008,

December 31, 2008, March 31, 2009, June 30, 2009, September 30, 2009, December 31, 2009, March 31, 2010, June 30, 2010, September 30, 2010, December 31, 2010, March 31, 2011, June 30, 2011, March 31, 2012, June 30, 2012, September 30, 2012, December 31, 2012, March 31, 2013, June 30, 2013, September 30, 2013, December 31, 2013, March 31, 2014, September 30, 2014, December 31, 2014, March 31, 2015, June 30, 2015, September 30, 2015, December 31, 2015, March 31, 2016, June 30, 2016, September 30, 2016, March 31, 2017, June 30, 2017, September 30, 2017, December 31, 2017, March 31, 2018, June 30, 2018, September 30, 2018, December 31, 2018, and March 31, 2019, in the amount of \$1,105,605.35, plus statutory additions and interest accruing from and after September 2, 2019, including interest pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c); and,

B. The United States of America shall recover its costs, and be awarded such other and further relief as the Court determines is just and proper.

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General
Tax Division, U.S. Department of Justice

/s/ Marie E. Wicks
MARIE E. WICKS
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Washington, D.C. 20044
202-307-0461 (v)
202-514-5238 (f)
Marie.E.Wicks@usdoj.gov

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Marie E. Wicks, Trial Attorney, U.S. Department of Justice, Tax Division
P.O. Box 55, Washington, D.C. 20044
(202) 307-0461; Marie.E.Wicks@usdoj.gov

DEFENDANTS

Castle Air Conditioning Corp.

County of Residence of First Listed Defendant Queens County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
26 U.S.C. s. 7401

Brief description of cause:
Reduce to judgment tax assessments

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 1,105,605.35

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

09/13/2009

SIGNATURE OF ATTORNEY OF RECORD

/s/ Marie E. Wicks

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, Marie E. Wicks, counsel for United States of America, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☒
☐
☒

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
the complaint seeks injunctive relief,
the matter is otherwise ineligible for the following reason Tax Matter

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☒ No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
- c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: .

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☐ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: /s/ Marie E. Wicks

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

UNITED STATES OF AMERICA

Plaintiff(s)

v.

CASTLE AIR CONDITIONING CORP.

Defendant(s)

Civil Action No. 1:19-cv-5253

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Castle Air Conditioning Corp.
549 51st Avenue
Long Island City, NY 11101

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Marie E. Wicks, Trial Attorney
U.S. Department of Justice, Tax Division
P.O. Box 55
Washington, D.C. 20044
Marie.E.Wicks@usdoj.gov
(202) 307-0461

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 1:19-cv-5253

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: